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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 11 1996

In the Matter of)

Implementation of Section 302 of)
the Telecommunications Act of 1996)

CS Docket No. 96-46

Open Video Systems)

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REPLY COMMENTS OF
THE NORTHERN DAKOTA COUNTY CABLE COMMUNICATIONS COMMISSION (NDC4)

Northern Dakota County Cable Communications Commission (NDC4) respectfully submits these reply comments to the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding.

I. INTRODUCTION

On March 11, 1996, the Commission released a Notice of Proposed Rulemaking (FCC 96-99) ("Notice"), requesting comment on how it should implement the regulatory framework for open video systems ("OVS"). In response, the National League of Cities, the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, Montgomery County, and several cities (hereinafter "NLC"), filed joint comments containing specific proposals for implementing that framework.

In their comments, NLC identified four key principles that must guide the Commission in formulating its rules. First, the Commission's rules regarding the PEG and other Title VI requirements mandated by Congress for OVS must ensure that OVS operators will meet local community needs and interests. Second, the Commission must adopt nondiscrimination provisions that ensure that all programmers will have truly open and affordable access to OVS and that prevent an OVS from becoming a cable system in disguise. Third, the 1996 Telecommunications Act does not permit cable operators to become OVS operators. Fourth, the Commission's rules must acknowledge the property interests that local governments hold in the local public rights-of-way.

NDC4 strongly supports NLC's comments and urges the Commission to follow these four principles in formulating OVS rules. NDC4 discusses below its experience in creating and implementing PEG obligations that meet critical local needs.

II. DISCUSSION

The Commission's statutory mandate in adopting PEG requirements for OVS is clear. As NLC notes, the Telecommunications Act of 1996 requires the Commission to establish PEG obligations for OVS that are consistent with local needs and interests, and to impose on an OVS operator obligations equivalent to those obligations imposed on cable operators. To fulfill these mandates, the Commission should, as proposed by NLC, require OVS operators "to match or negotiate," that is, to match each incumbent cable operator's PEG obligations, or to negotiate agreements acceptable to the affected communities.

The record in this proceeding demonstrates that local governments -- as franchising authorities and PEG programmers -- play a critical role in ensuring that local communication needs and interests are met.¹ Moreover, local governments, as the National Cable Television Association states, "are in the best position to deliver on the Act's intent to accomplish PEG access over open video systems."²

In this seven-city, 17,000-subscriber cable system, the Northern Dakota County Community Television Corporation (NDCTV) operates seven local, non-commercial PEG access channels. One channel is used to carry the NASA satellite service, another is a 24-hour non-commercial bulletin board channel, and five channels are filled with public, multi-faith, educational, and local government video programming, produced, acquired, or submitted by local community residents and organizations. Use of these channels

¹See, e.g., Comments of the Below-Named Political Subdivisions of the State of Minnesota at 7 (franchising authorities have "considerable experience in successfully negotiating, creating and implementing...PEG obligations"); Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 34 ("The local franchising authority is the governmental entity best positioned to appreciate community needs and most experienced in the implementation of PEG access rules"); and Joint Comments of Cablevision Systems Corporation and the California Cable Television Association at 21 ("Congress certainly understood that PEG access requirements are now imposed by localities to meet critical localism goals").

²Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 33. See also, Comments of MFS Communications Company, Inc. at 27 ("The manner in which OVS operators and/or their customer programmers comply with the PEG obligations should generally be worked out between the programmer and the local government entity that oversees the implementation of these rules for cable operators").

by community members who have a message to distribute and viewership by cable subscribers in this community grows dramatically every year. We have a very active and cooperative community system that benefits from widespread collaboration between individual volunteers, non-profit groups, the private sector, and government. Our entire operation survives and thrives by the cost-effectiveness and productivity gained from these very local and community-oriented partnerships.

Local programming here reflects the needs and interests of this community, because every single program must be formally submitted by a person who lives, works, or attends school in one of our seven cities. The 11-member non-profit Board of Directors that operates the Community Television Corporation and the 14-member municipal Cable Commission that acts as the Local Franchise Authority are made up of community members and elected city officials who live in and understand the interests of this community.

Before the original cable television Franchise was granted in 1985, these seven communities worked together to conduct a formal Community Needs Assessment and formed a Joint Powers Cooperative to issue a Request for Proposals (RFP) that would meet the specific needs and interests of this community. Now as we approach the expiration of this community's first cable television Franchise, the seven cities prepare to conduct another very extensive assessment before entering into renewal discussions with the operator. The purpose of the assessment is to establish a comprehensive and well-developed plan for a system that will specifically serve this community.

Over the first 11 years of this Franchise, both the non-profit Community Television Corporation and the Local Franchising Authority have had to constantly monitor community needs and interests, working closely with the cable operator and adjusting when necessary. We have gauged our community's needs via liaison committees and task forces, viewers' and users' surveys, the formal consumer complaint process, occasional public hearings and special meetings, and televised monthly public meetings with call-in opportunities for viewers. At times certain provisions of the Franchise have been re-negotiated as the industry has evolved and community needs have changed or become better understood. This Franchise Authority has granted variances and even released certain requirements when appropriate to meet the needs of this community.

When we have used an independent market research firm to acquire viewer statistics and PEG access user feedback, we have repeatedly found wide variations between the results for our seven-city cable service territory and other similar suburban cable systems in the Minneapolis/St. Paul metropolitan area. If there are substantial, measurable differences in PEG access needs and interests for residents of this community compared with our

neighbors less than 10 miles away, we can only imagine the gaping variations that are possible from state to state, region to region, and coast to coast.

In determining Franchise requirements for PEG programming, channels, production facilities and equipment, capital and operating funds, this Local Franchise Authority has always had the responsibility to balance community needs against their associated costs, when these items are paid for directly by the cable operator and indirectly by its subscribers. We are perfectly capable and have the appropriate checks and balances in place to hold a healthy debate and establish the proper compromise between industry and consumer needs. The appropriate place for this debate is here in this community, with the elected officials, community members, non-profit organizations, institutions, consumers, and businesses who will be affected locally, who understand the needs and interests of this community, and who are accountable for the results.

By adopting NLC's proposal, the Commission will ensure that PEG access continues to serve local needs and interests in the NDC4 jurisdiction, and will satisfy the Commission's statutory mandate to impose equivalent obligations on OVS and cable operators.


III. CONCLUSION

NDC4 respectfully requests the Commission to adopt a framework for OVS consistent with the proposals and principles recommended by NLC et al. in their comments.

Respectfully submitted,

NORTHERN DAKOTA COUNTY CABLE COMMUNICATION COMMISSION

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